IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 952 OF 2003

IN

NOTICE OF MOTION NO. 3114 OF 1999

IN

SUIT NO. 1466 OF 1994

I.C.I.C.I. Bank Ltd ....Plffs.
vs.
Zadona Electronics Ltd and ors. ....Defnds.
A N D
The State of Maharashtra ....Appls.
A N D
The Court Receiver, High Court, Bombay ....Respds.

NOTICE OF MOTION NO. 3402 OF 2003
IN
NOTICE OF MOTION NO. 3291 OF 1999
IN
SUIT NO. 1466 OF 1994

I.C.I.C.I. Bank Ltd ....Plffs.
vs.
Zadona Electronics Ltd and ors. ....Defnds.
A N D
The State of Maharashtra ....Appls.
A N D
The Court Receiver, High Court, Bombay ....Respds.

NOTICE OF MOTION NO. 3699 OF 2003
IN
NOTICE OF MOTION NO. 952 OF 2003
IN
NOTICE OF MOTION NO. 3114 OF 19999
IN
SUIT NO. 1466 OF 1994

I.C.I.C.I. Bank Ltd ....Plffs.
vs.
Zadona Electronics Ltd and ors. ....Defnds.
A N D
The State of Maharashtra ....Appls.
A N D
The Court Receiver, High
Court, Bombay ....Respds.

NOTICE OF MOTION NO. 3703 OF 2003
IN
NOTICE OF MOTION NO. 3402 OF 1999
IN
NOTICE OF MOTION NO. 3291 OF 1999
IN
SUIT NO. 1466 OF 1994

I.C.I.C.I. Bank Ltd ....Plffs.
vs.
Zadona Electronics Ltd and ors. ....Defnds.
A N D
The State of Maharashtra ....Appls.
A N D
The Court Receiver, High
Court, Bombay ....Respds.

NOTICE OF MOTION NO. 307 OF 2004
IN
SUIT NO. 1466 OF 1994

I.C.I.C.I. Bank Ltd ....Plffs.
vs.
Zadona Electronics Ltd and ors. ....Defnds.
A N D
The State of Maharashtra .....Resps.
A N D
Kamgar Sabha ...Applns.

Faisal Sayyed i/b. M.K. Ambalal and Co.
for the plaintiffs.
Burgess Colabawala a/w. Mihir Moday and Deepali Wakde i/b. Kashar and Co.
for defendant no.2.
S.R. Rajguru for Union of India/Defendant.

Ranjana Lad i/b. Little and Co. for S.B.H.

Geeta Shastry for Applicant in N/M-952/2003 and N/M- 3402 of 2003.

Mohankumar K. applicant in Notice of Motion No. 3699 of 2003 and 3703 of 2003

Jane Cox, applicant in Notice of Motion no. 307 of 2004-Union.

D.R. Dhurat, 1st Asstt to Court Receiver present.

CORAM: S.U. KAMDAR, J.

DATE : 6th October, 2005.

P.C. :.

1. Out of the aforesaid motions two motions are taken out by the Government being Notice of Motion no. 952 of 2003 and 3402-2003.

2. By the said two motions the government as applicants are seeking priority over all creditors inrespect of the sales tax dues under the provisions of 38(b) of the Sales Tax act. By Notice of Motion no. 3402 of 2003 a direction is sought to make payment as per the order dated 5.4.2002. The said order has been stayed by this court because of the claims raised by the workers in Notice of Motion No. 3073 of 2003, 3699 of 2003 and 307 of 2004..

3. In the light of the claim made over the priority raised by the workers which are required to be determined alongwith the claims of secured creditors and the government. The division Bench of this court has in the case of **Pandurang Keshav Gorwadkar and anr. vs. Paper and Pulp Conversions**

Ltd and Ors. reported in 2004(6) Bom. C.R. 582 has taken a view that the DRT who is seized of the matter can determine the priority of the workers. An elaborate guidelines are also set out therein. Learned counsel appearing for the plaintiffs states that though the present suit is arising out of claim by the bank in the capacity of debenture trustees still other banks and financial instituions have already obtained the recovery certificate, one such bank is a Hong Kong Bank' who is one of the creditor and is also claiming security over the assets of the company. It is therefore submitted that the question of priority will have to be determined in that proceedings before the DRT in view of the aforesaid Division Bench judgment. Learned counsel appearing in the Notice of Motion no. 307 of 2004 has tendered an order passed by the DRT in original Application No. 3379 of 2000 which has been initiated by another secured creditor namely Kotak Mahindra and by the judgment dated 2.6.2005 once again a decree has been passed and directions are given to recover the said amount of money. In view of the fact that the

DRT is already in process of disposing off the assets of the first defendant company which are securities to the various creditors it is in the interest of justice that the priority issue to be determined by the said DRT in light of the judgment delivered by the divison bench. In so far as the claim of the government is concerned the issue whether they are having right to claim the amount in priority over the workers and other creditors is kept open to be determined in the recovery proceedings before the DRT in accordance with law. The government will be entitled to raise all contentions which are available to them in law and the same will be determined by the Tribunal before fixing the priorities of various claimants including workers and various other secured creditors.

4. With the aforesaid directions all these motions are disposed off accordingly. All parties are at liberty to make necessary application before the DRT. All the persons who file application before the DRT claiming priority to be heard in accordance

with law and in accordance with the Division Bench judgment. The unions are also permitted to represent the workers.

sd/-

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